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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 MARIJA PAUNOVIC and DUSAN
12 PAUNOVIC, individually and on behalf
13 of all others similarly situated,

14 Plaintiffs,

15 v.

16 OBI SEAFOODS LLC and OCEAN
17 BEAUTY SEAFOODS LLC,

18 Defendants.

19 CASE NO. C21-884 MJP
20 ORDER ON MOTION TO
21 DETERMINE AMOUNT OF FEE
22 AWARD

23 This matter comes before the Court on Plaintiff's Motion to Determine Amount of Fee
24 Award. (Dkt. No. 84.) Having reviewed the Motion, the Response (Dkt. No. 91), the Reply (Dkt.
No. 93), and all supporting materials, the Court GRANTS in part the Motion.

25 **BACKGROUND**

26 The Court previously granted Plaintiffs' Motion to Compel and awarded fees and costs
27 "incurred from April 15, 2022 to the date of the Reply to reflect the date by which Plaintiffs
28 narrowed their request." (Dkt. No. 73 at 4.) Although the Court merely asked Plaintiffs to file a

1 statement of fees and costs, they filed the present Motion to which Defendants have served a
 2 response. Plaintiffs request \$11,462.50 in fees for 23.6 hours billed by two attorneys, Ryan Tack-
 3 Hooper and Sarah Smith. (See Declaration of Toby J. Marshall ISO Mot. ¶¶ 6-8, 12-13, 17 & Ex.
 4 1 (Dkt. No. 85).) Plaintiffs ask the Court to approve an hourly rate of \$525 for Tack-Hooper and
 5 \$350 for Smith. (Id. ¶¶ 12-13.) Tack-Hooper has approximately 13 years of experience and
 6 Smith has approximately 3 years of experience. (Id. ¶¶ 4-5.) In their reply, Plaintiffs also suggest
 7 that Tack-Hooper won approval of an hourly rate of \$475 in 2019 from the U.S. District Court
 8 for Delaware. (Reply at 2 n.1.)

9 Defendants object to the requested hourly rates and the total number of hours billed. (Dkt.
 10 No. 91.) And Defendants ask the Court to award no more than \$3,457.50 and to hold any award
 11 in abeyance. (Id. at 8-9.)

12 ANALYSIS

13 To determine the fee award for a prevailing party, the Court begins by calculating a
 14 lodestar “by taking the number of hours reasonably expended on the litigation and multiplying it
 15 by a reasonable hourly rate.” Fischer v. SJB-P.D. Inc., 214 F.3d 1115, 1119 (9th Cir. 2000)
 16 (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). The Court determines the hourly rate by
 17 considering the “evidence produced by the parties, including fee rates of other attorneys in
 18 similar practices, awards in comparable cases, counsel’s experience and reputation level, and the
 19 market rates, as well as two additional Kerr factors: the novelty/difficulty of the issues and the
 20 preclusion of other work.” Dang v. Cross, 422 F.3d 800, 814 (9th Cir. 2005). In deciding the
 21 number of hours “reasonably expended,” the Court considers whether the time on matter that
 22 was “excessive, redundant, or otherwise unnecessary.” Hensley, 461 U.S. at 434. The requesting

1 attorney must also provide reasonable documentation of the work performed to enable this
 2 determination. Id. at 433.

3 The Court first finds that the requested hourly rates require some adjustment.

4 As to Tack-Hooper, Plaintiffs suggest that his requested hourly rate of \$525 is reasonable
 5 in light of his experience and fee rates approved in similar cases in this District as well as the
 6 approval of his 2019 hourly rate of \$475. (See Dkt. No. 84 at 3; Dkt. No. 93 at 2 n.1.) And in
 7 their Reply, Plaintiffs argue that Tack-Hooper is similarly experienced to Matthew Lee,
 8 Plaintiff's counsel in Kingston v. Int'l Bus. Mach. Corp., whose hourly rate of \$525 the Court
 9 approved. (See Dkt. No. 93 at 2 (citing Kingston, C19-1488 MJP, Dkt. No. 192 (W.D. Wash.
 10 June 29, 2021)).) The Court is not convinced that Tack-Hooper's requested rate is merited. First,
 11 the comparison to Lee falls short. The Court approved Lee's hourly rate after observing his skill
 12 through a hard-fought trial that led to a substantial result for his client. The Court has not had
 13 similar occasion to observe Tack-Hooper's skill. Second, a comparison to Toby Marshall's rate
 14 that the Court approved in Kingston also suggests that the requested rate is too high. Although
 15 Marshall and Tack-Hooper work at the same firm, Marshall has substantially more experience
 16 than Tack-Hooper and the Court approved an hourly rate of \$525 after observing Marshall
 17 through the same successful trial. Third, contrary to Defendants' position, the Court is not
 18 convinced that it should determine Tack-Hooper's rate with reference to the rates charged by
 19 Defendants' counsel. That comparison is inapt given the contingent nature of Plaintiffs'
 20 counsel's work and the lack of any broad data for hourly rates of defense attorneys. See Trevino
 21 v. Gates, 99 F.3d 911, 925 (9th Cir. 1996). Having considered the prior awards for counsel of
 22 similar skill and experience in this District, the Court finds an hourly rate of \$500 to be
 23 appropriate for Tack-Hooper.

1 As to Smith, the Court also finds a downward adjustment necessary. Plaintiffs again cite
 2 to other fee awards from similar cases to justify Smith's hourly rate of \$350. But these
 3 comparisons fall short. (Dkt. No. 84 at 3.) For example, Plaintiffs rely on the 2022 approval of an
 4 hourly rate of \$325 for another associate of the same firm. (*Id.* (citing Hoffman v. Hearing Help
 5 Express, Inc., No. 3:19-cv-05960-MJP, Final Approval Order, Dkt. No. 150 at 3-4 (W.D. Wash.
 6 Jan. 5, 2022)).) That award was based on 2021 rates for an attorney with nearly two more years
 7 of experience than Smith from the same firm. (See Ex. C. to Decl. of Renea Saade (Dkt. No.
 8 92).) Using this as a benchmark, the Court finds that an hourly rate of \$325 is more appropriate
 9 for Smith.

10 The Court otherwise finds that the hours for which counsel requests compensation to be
 11 reasonable. Plaintiffs have limited their request to only two billing attorneys who spent time that
 12 was necessary to achieve a sound result for their clients. The Court remains unconvinced by any
 13 of Defendants' speculative arguments that the time billed was redundant or unnecessary. The
 14 Court therefore finds the hours requested to be reasonable: 18.3 hours for Tack-Hooper and 5.3
 15 for Smith.

16 In full, the Court awards Plaintiffs \$10,872.50 in fees for successfully bringing the
 17 Motion to Compel (\$10,872.50 = (18.3 x \$500) + (5.3 x \$325)). And the Court rejects
 18 Defendants' request that the fee award be held in abeyance. This argument turns on Defendants'
 19 assertion that they are seeking fees and costs in defending against this lawsuit, that they might
 20 make an offer of judgment, and that they might possibly file a motion through which they
 21 could be awarded fees under Rule 37. The possibility that these events might occur in the future
 22 does not convince the Court to hold the fee award in abeyance particularly given the Court's
 23 underlying rationale for awarding the fees in the first place.

24

1 **CONCLUSION**

2 The Court finds that Plaintiffs are entitled to a fee award of \$10,872.50. Defendants shall
3 remit payment to Plaintiffs' counsel within 30 days of entry of this Order and file with the Court
4 a notice of compliance with this Order by that same date.

5 The clerk is ordered to provide copies of this order to all counsel.

6 Dated August 12, 2022.

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8 Marsha J. Pechman
9 United States Senior District Judge

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